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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,714	01/12/2004	Lisa Ann Heim	HLA-32120	9753
22202 7590 01/08/2008 WHYTE HIRSCHBOECK DUDEK S C 555 EAST WELLS STREET SUITE 1900 MILWAUKEE, WI 53202				
EXAMINER				
REDDING, DAVID A				
ART UNIT		PAPER NUMBER		
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01/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/755,714

Applicant(s)

HEIM, LISA ANN

Examiner

David A. Redding

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1,2,5-7, 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,347,428 to Shimko et al. (Shimko) in view of USP 5,367,740 (McCray).

Claim 5 is considered to be a process limitation of intended use.

Shimko discloses a hand-held wet/dry vacuum cleaner comprising a handle section 22 which includes the cleaning fluid reservoir 16 and is selectively mounted onto the motor housing 18 by means of latch 19, the cleaning fluid tank 16 being made from a clear plastic material (see col. 3, lines 51 thru col. 4, line 7; figure 3). The pump 32 and cleaning fluid tube 58 connected to a spray nozzle 30 are positioned within the handle section 22. The cleaner further comprises a main section designated motor housing 18 comprising an electric motor (190, 74), and a suction fan 72. A dirty fluid reservoir 20 is located adjacent to the motor housing 18. Since the actuator can be repeatedly compressed causing a pulsating discharge of fluid the cleaner is capable of providing "pulsating spray". Also, figure 1 shows the cleaner to have a "triangular profile".

Shimko differs from the claims in that the fluid is dispensed via a manual pump as opposed to a motor powered pump.

The McCray patent discloses a handheld surface cleaning apparatus having a cleaning solution which is dispensed via a motor 36 driven pump 50.

The pump is disclosed as being positioned between the fluid reservoir and the spray nozzle (col. 5, lines 11-19) as used in the instant application.

Accordingly, it would have been obvious to one skilled in the art to provide a motor-driven pump in the Shemko hand-held cleaner in view of the known practice as disclosed in the McCray patent. The motor driven pump in McCray is considered to be inherently capable of providing pulsed or jetting spray action.

Shimko differs from the claims in that the pump 32, tube 58, and nozzle 30 are positioned in the handle section 22 instead of the main section 18. Also, the dirty fluid reservoir 20 is adjacent to the main section 18 and not integral, as claimed. Further, Shimko discloses only one tube 58 connected to the housing, not a plurality as claimed.

Regarding the position of the pump 32, tube 58, nozzle 30, In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.)

Since re-positioning the pump 32, tube 58, nozzle 30 into the main section 18 instead of the handle section 22 would not alter the operation of the Shimko cleaner, the claims are considered to be obvious in view of Shimko.

In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965) (A claim to a fluid transporting vehicle was rejected as obvious over a prior art reference which differed from the prior art in claiming a brake drum integral with a clamping means, whereas the brake disc and clamp of the prior art comprise several parts rigidly secured

together as a single unit. The court affirmed the rejection holding, among other reasons, "that the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice.") Thus, making the dirty fluid reservoir 20 in Shimko integral with the main section 18 is considered an obvious design choice.

Regarding the claimed plurality of houses connected to the nozzle, In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies ** in the joint, and a plurality of "ribs" ** >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.) Since adding more tubes to the nozzle 30 in Shimko would expectedly merely increase the flow of fluid doing so is considered to be obvious.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,347,428 to Shimko et al. (Shimko) in view of USP 5,367,740 (McCray).

Bags are routinely sold with articles as promotional items and as a convenience to the buyer. Accordingly, it would have been obvious to one skilled in the art that a bag with a draw-string be provided with the cleaner in Shimko for storing the cleaner from a

hook or handle and as a sales promotion from the seller to the buyer. Providing a support surface is considered to be intended use and of no patentable weight.

Neoprene is considered to be an obvious material of choice.

Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,347,428 to Shimko et al. (Shimko) in view of USP 5,367,740 (McCray).

Shimko discloses a hand-held wet/dry vacuum cleaner comprising a handle section 22 which includes the cleaning fluid reservoir 16 and is selectively mounted onto the motor housing 18 by means of latch 19, the cleaning fluid tank 16 being made from a clear plastic material (see col. 3, lines 51 thru col. 4, line 7; figure 3). The pump 32 and cleaning fluid tube 58 connected to a spray nozzle 30 are positioned within the handle section 22. The cleaner further comprises a main section designated motor housing 18 comprising an electric motor (190, 74), and a suction fan 72. A dirty fluid reservoir 20 is located adjacent to the motor housing 18.

Since the actuator can be repeatedly compressed causing a pulsating discharge of fluid the cleaner is capable of providing "pulsating spray". Also, figure 1 shows the cleaner to have a "triangular profile".

Shimko differs from the claims in that the fluid is dispensed via a manual pump as opposed to a motor powered pump.

The McCray patent discloses a handheld surface cleaning apparatus having a cleaning solution which is dispensed via a motor 36 driven pump 50.

The pump is disclosed as being positioned between the fluid reservoir and the spray nozzle (col. 5, lines 11-19) as used in the instant application.

Accordingly, it would have been obvious to one skilled in the art to provide a motor-driven pump in the Shemko hand-held cleaner in view of the known practice as disclosed in the McCray patent. The motor driven pump in McCray is considered to be inherently capable of providing pulsed or jetting spray action.

Shimko differs from the claims in that the pump 32, tube 58, and nozzle 30 are positioned in the handle section 22 instead of the main section 18. Also, the dirty fluid reservoir 20 is adjacent to the main section 18 and not integral, as claimed. Further, Shimko discloses only one tube 58 connected to the housing, not a plurality as claimed.

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The court affirmed the rejection holding, among other reasons,

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Neoprene is considered to be an obvious material of choice.

Response to Arguments

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Redding whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ David Redding /
Primary Examiner
Art Unit 3723

DAR

